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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-7-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD Nos.36 to 42 of 2006
and
CMP Nos.266 to 269 of 2006

Kothandaraman .. Petitioner in CRP 36 & 40/2006

Anusuya .. Petitioner in CRP 37 & 39/2006

Mangayarkarasi .. Petitioner in CRP 38, 41 and 42/2006

vs

K.Rajammal .. Respondent in all revisions

CRP Nos.36 to 41/2006 preferred under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and 1 of 1980 against the judgment and decree dated 26.10.2005 made in RCA Nos.788, 789, 790, 798, 799 and 800 of 2004 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, confirming the order and decree dated 12.4.2004 made in RCOP Nos.439, 441, 440, 1038, 1039 and 1037 of 2003 on the file of the XIV Small Causes Court (Rent Controller), Chennai.

CRP No.42/2006 preferred under Sec.25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 as amended by Act 23 of 1973 and 1 of 1980 against the judgment and decree dated 26.10.2005 made in RCA No.1325 of 2004 on the file of the VIII Small Causes Court, (Appellate Authority), Chennai, confirming the order and decree dated 16.9.2004 made in RCOP No.1370 of 2002 on the file of the XIV Small Causes Court (Rent Controller), Chennai.

For Petitioners : Mr.AR.L.Sundaresan
Senior Counsel
for Mr.P.Rajagopal

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For Respondent : Mr.P.B.Balaji

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COMMON ORDER

This order shall govern all the above seven revision petitions.

2.The unsuccessful tenants, three in number, who have suffered an order of eviction in the three RCOPs filed by the respondent-landlady in RCOP Nos.439, 440 and 441 of 2003, and whose appeals in RCA Nos.788, 789 and 790 of 2004 have failed, have brought forth three revisions in CRP Nos.36, 37 and 38 of 2006 respectively.

3.Equally, on dismissal of the three RCOPs filed by the tenants for deposit of rental arrears under Sec.8(5) of the Act in RCOP Nos.1037, 1038 and 1039 of 2003, they preferred three appeals in RCA Nos.798, 799 and 800 of 2004, and on dismissal of the same, they have brought forth the other three revisions in CRP Nos.39, 40 and 41 of 2006 respectively.

4.The landlady filed another petition in RCOP No.1370 of 2002 against the tenant who is actually shown as the respondent in RCOP No.440/2003, seeking eviction on the grounds of personal use and occupation and additional accommodation, and the said petition was ordered. Aggrieved, the said tenant took it on appeal in RCA No.1325 of 2004, and on its failure, she brought forth CRP No.42/2006.

5.The respondent-landlady filed the above three RCOPs against the revision petitioners-tenants alleging in short that the premises were occupied by the revision petitioners-tenants on monthly rental basis at the rate of Rs.375/-, Rs.525/- and Rs.540/- respectively; that there has been arrears of rent from September 2002 till January 2003, and thus, there was willful default, and under the circumstances, they were to be evicted.

6.The revision petitioners-tenants namely the respondents in those RCOPs, contested the same stating that there was neither default nor willful default; that it is true that they have been the tenants on monthly rental basis; that for the three months namely September, October and November 2002, there was water tax arrears; that under the circumstances, there was termination of water connection; that they issued a notice to the landlady; but, she did not comply with the demand made therein; that under the circumstances, after issuing a notice, each tenant has paid the entire water tax arrears; that thereafter, it was adjusted towards the rents for the months of September, October and November 2002; that for these periods, the electricity charges were sent by money orders; but, they were refused; that as regards the rent for the month of December 2002, an application under Sec.8(5) of the Act was filed by every tenant; that they were also pending, and under the circumstances, all the above RCOPs filed by the landlady were to be dismissed.

7.The revision petitioners-tenants filed RCOP Nos.1037, 1038 and 1039 of 2003 stating that after adjusting the payment of water tax arrears towards rental arrears for September, October and November 2002, electricity charges were sent by money orders; but, they were refused, and under the circumstances, they had no chance than to approach the Rent Controller for depositing the rental from the month of December 2002; that accordingly, they have applied for, and hence, they should be permitted to make the deposit thereon. All these three petitions were contested by the

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landlady.

8.On enquiry jointly by the Rent Controller, all the above petitions filed by the landlady, were allowed, and the petitions filed by the tenants, were dismissed. The appeals at the instance of the tenants failed, and hence, the above six revisions have been brought forth by the tenants before this Court.

9.One more petition was filed by the landlady stating that she is aged 70 years; that she is suffering from hypertension and diabetics; that she is occupying the premises in the second floor; that due to her age and illness, she finds it difficult to occupy the same; that under such circumstances, she requires one of the premises found in the ground floor; that for her personal use and occupation and also for additional accommodation, she wants the portion which is being occupied by the respondent in RCOP No.440/2003, and hence, she brought forth RCOP No.1370 of 2002. This petition was contested by the respondent-tenant therein, who is the revision petitioner in CRP No.38 of 2006, stating that the reasons put forth by the landlady namely illness, etc., were all utter falsehood; that she was not suffering from any illness; that at the time when the RCOP was filed, the two portions in the first floor were actually vacant; that had it been true, she would have occupied the said portion; that this would indicate that it lacks bonafide; that apart from that, both the grounds of personal use and occupation and additional accommodation cannot co-exist; that as far as the ground of personal use and occupation is concerned, it is an admitted position that she is having other property which is available; that under the circumstances, the ground of additional accommodation is without any bonafide whatsoever, and hence, the petition was to be dismissed. On enquiry, the Rent Controller allowed the petition. Aggrieved, the tenant took it on appeal, which also met the same fate. Hence, the revision in CRP No.42/2006.

10.Advancing his arguments on behalf of the revision petitioners, the learned Senior Counsel would submit that in the instant case, the tenants are actually in three tenements occupying the premises which belonged to the landlady; that they have been there for more than decades; that there is already water connection; that due to the non-payment of the water tax, there was a disconnection by the Board; that it was actually due to the non-payment by the landlady; that there was a notice issued by the tenants on 26.9.2002 as found under Ex.P3, stating the circumstances for the restoration of the water connection immediately, and if not, they had no other option than to spend for the same and adjust the payment towards the rents payable by them for the months of September, October and November 2002; but, no steps were actually taken by the landlady; that on the contrary, a reply notice was issued on 30.12.2002 containing evasive and false allegations; that only by the said compelling circumstances, they had to make the payment of water charges and tax to the Board, and thereby, they had restoration of the water connection; that all the tenants have paid more than three months' rental at a time; that for the months of September, October and November 2002, a lump sum payment towards the water tax was also divided among them; that they have adjusted the same towards the rents for these three months; that every month, there was a money order sent for the electricity charges; but, they were all refused; and that under the circumstances, they had no option than to file applications under Sec.8(5) of the Act for the deposit of rental from December 2002.

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11.Added further the learned Senior Counsel that in the instant case, there was a termination of water connection; that the landlady was also reminded by way of a notice; that even then, it was not complied with; that it is true that the petitioners-tenants have not approached the Rent Controller by filing an application under Sec.17 of the Act for restoration of the amenity; that this Sec.17 is only an enabling provision; that it is not compulsory that they should adopt that procedure; that in the instant case, they have sent a notice for restoration of the amenity; but, it was not done; and that while there were compelling circumstances available, there was all possibility for them to adopt the procedure of making the payment.

12.The learned Senior Counsel would further add that in the instant case, there was no two months' notice issued; that even the notice that was issued by the landlady, was only a reply to the original notice issued by the tenants namely Ex.P3; that under the circumstances, there is no question of willful default that would arise; that in order to show that there was a willful default, there must have been supine indifference or recalcitrant attitude or willful act; that in the instant case, it cannot be stated so for the simple reason that if there were no compelling circumstances, there was no need for them to make the payment; that further, it is not the case of the landlady that there was any default in the past; that only because of the compelling circumstances, they have done so, and hence, they are justified in making the payment of water tax arrears and also in adjusting the same in the monthly rental; that under the circumstances, all the RCOPs filed by the landlady, should have been dismissed by the Rent Controller; that even without considering either the factual or legal position, the appellate authority has also affirmed the same, and hence, those orders of the authorities below have got to be set aside.

13.In support of his contention, the learned Senior Counsel relied on the following decisions:

(i) 1985 (I) MLJ 354 (K.MOHIDEEN SAHIB V. THEODRE SAMUEL);
(ii) 1989-2-L.W. 68 (JANAKI DEVI V. KRISHNAN NAMBIAR);
(iii) 1998 (I) CTC 679 (MANGALAMBAL V. ANJALI DEVI);
(iv) 1998 (III) CTC 56 (M.K.SANKARAN V. S.BIRLASEKARAN AND ANOTHER);
(v) 2000 (I) CTC 742 (M/S.CHORDIA AUTOMOBILES V. S.MOOSA AND OTHERS);
(vi) 2000 MLJ (SUPP.) 270 (KASTURI V. PADMA);
(vii) 2000 (I) CTC 137 (V.S.HAMID SULTAN V. ABDUL LATHEEF); and
(viii) 2003 (3) CTC 348 (P.M.PUNNOOSE V. K.M.MUNNERUDDIN AND OTHERS).

14.As far as the other RCOP on the grounds of personal use and occupation and additional accommodation is concerned, the learned Senior Counsel would submit that in the instant case, there is no material available to show that she was old; that merely because she was 70 years old, one cannot say that she could not occupy the other premises available; that the case of the landlady is that she is occupying the second floor, and due to her old age, she could not climb up to the second floor; that at the time of the filing of the RCOP, two portions were available in the first floor; that had it been true and genuine case, she would have occupied the same, but not done so; and that this would be

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indicative of the lack of bonafide.

15.Added further the learned Senior Counsel that in the instant case, for getting an order of eviction on the ground of personal use and occupation, the first and foremost condition is the non-availability of any premises for the landlord; that in the instant case, there are other portions available in the premises in question, which is also an admitted position; that under the circumstances, it could be occupied by the landlady; that as regards the ground of additional accommodation, there was no need, and it lacks bonafide; that one cannot co-exist with the other; that under the circumstances, the authorities below have not considered this aspect of the matter, and hence, it should have been rejected, and all these revisions have got to be allowed setting aside the orders of the authorities below.

16.In answer to the above, it is contended by the learned Counsel for the respondent-landlady that in the instant case, the landlady came forward to file the RCOPs alleging that there was rental arrears for the months of September, October, November and December 2002 and January 2003; that the only plea that was taken by the tenants, was that there was payment of water tax arrears; that at one stage, they have stated that it was water tax arrears; that at the other stage, it was stated as water charges; that arrears of water tax must be paid by the landlady; that arrears of water charges should be paid by the tenants; that at one stage, it was stated that there was a termination made by the department; that at another stage, it was stated that it was done by the landlady as found in the notice; that in the instant case, there were no compelling circumstances at all for the simple reason that even the termination as per the notice was made in the month of September 2002; but, they have paid only in the month of November 2002; that for two months they have waited; that if they felt any urgency, they should have filed an application for restoration of the amenity; but, they have not done so; that in the instant case, there was not even a notice from the department for making payment; that they have voluntarily made the payment; that after making such voluntary payment, they cannot now come forward to say that they were under compelling circumstances; that even the service of notice was not made; that apart from that, when no notice was served, they were not expected to make the payment; but, they have made so; that it was purposefully done in order to create a cause of action; that it is true that they issued a notice under Ex.P3; that after sending such a notice, if not the amenity is restored, the only course open to them is to go for the restoration of the amenity; that in the instant case, for the use of the water, actually, it was their liability to make the payment; but, they have not paid the water charges; that the landlady is not under any liability to make any payment of water charges; and that since they have not paid, they had suffered a termination for which they cannot find fault with the landlady.

17.Added further the learned Counsel that in the instant case, even the adjustments, which they have made, were wrongly done; that under the circumstances, there were no compelling circumstances, and it was a willful default; that further, applications under Sec.8(5) of the Act were filed for deposit of rental arrears from the month of December 2002 and also thereafter; that as such, for the months of September, October and November 2002, no payment of rental arrears was made at all; that though the applications were made for deposit of rental arrears from December

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2002, they have not deposited for the period from December 2002 to September 2003; but, the entire payment was made only in Court to the Counsel for the landlady, for a period of 10 months at a time; that once applications have been filed under Sec.10(2) of the Act for eviction on the ground of willful default, there was no impediment for the tenants to make the payment in that proceedings only; that the applications under Sec.8(5) of the Act were pending for a long time; that they have not deposited the rental arrears or made payment all along the period of 10 months; that this would be indicative of the fact that they continued to commit default even during the pendency of the proceedings; that even at this stage, pending the revisions, they have not made payment all along the period continuously; that under the circumstances, in all stages, they have committed willful default, and hence, the orders of eviction passed by the lower authorities, have got to be sustained.

18.As regards the petition for eviction on the grounds of personal use and occupation and additional accommodation, the learned Counsel for the respondent would submit that it is an admitted position that she is aged 70; that she has been occupying the second floor; that a landlady of 70 years old should not be compelled to occupy a portion which is in the second floor; that in such a situation, one would expect her to occupy a portion what is available in the ground floor; that it is true that at the time when the RCOP was filed two portions were available in the first floor; that it is not for the tenants to say that she could occupy any one of the portions in the first floor; that a lady of 70 years old, who is suffering from ailment, desired to occupy a portion in the ground floor; that there cannot be any impediment in law for allowing her to occupy such a portion; that under the circumstances, it was with bonafide; that on appreciation of the available circumstances, there was an order of eviction on that ground, and hence, the order is not to be interfered with, and it has got to be sustained.

19.In support of his contentions, the learned Counsel relied on the following decisions:

(i) 1991-2-L.W. 203 (MANORANJITHAM V. T.S.GANGABAI);
(ii) 1995-1-MLJ 254 (P.GOVINDARAJU V. S.P.KRISHNAN AND OTHERS);
(iii) 1997-2-L.W. 567 (S.SUNDARARAJAN V. S.A.VISWANATHAN CHETTY AND ANOTHER) and
(iv) 1999 (I) CTC 146 (AYYAMPERUMAL V. SHAIK DAWOOD ROWTHER).

20.The Court paid its anxious consideration on the rival submissions made.

21.It is not in controversy that these revision petitioners three in number, are the tenants under the landlady, who is the respondent herein, in respect of three tenements in the petitions mentioned premises and making the payment of monthly rental. The landlady filed the petitions for eviction on the ground of willful default alleging that there was rental arrears for the months of September, October, November and December 2002 and January 2003 i.e., for a period of five months. The main defence plea was that the tenants have paid the water charges and water tax; that it has been adjusted towards the rents for the months of September, October and November 2002; that during these three months' period, they have sent the electricity charges every month by money orders; but, they were refused; that under the circumstances, they had no option than to make the payment for the restoration of the amenity; that they were under

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compelling circumstances to pay the same, and accordingly, they have paid; that the same has also been adjusted, and hence, it cannot be termed as willful default. After careful consideration of the submissions made, and the factual position as could be seen in the instant case, and applying the principle of law, this Court is of the considered opinion that there was willful default for the following reasons.

22.It is not in controversy that the petitioners are the tenants under the landlady on monthly rental basis. It is an admitted position that they have actually not paid the rental for the months of September, October and November 2002. They have sent the money orders which would include only the electricity consumption charges. They have filed applications for depositing the rental arrears in Court under Sec.8(5) of the Act from the month of December 2002. Thus, the prime question that would arise for consideration would be whether the non-payment of rental for the months of September, October and November 2002 could be termed as willful default as put forth by the landlady or whether by compelling circumstances, they have made payment of the water charges and tax, and hence, it should not be construed as a default or willful default. Concededly, the rental payment for these three months was not made. According to the landlady, it was a willful default. It is true that no notice has been issued for recovery of those payments. Once the landlady calls it as arrears and willful default, the tenants came forward with the defence plea to state that there was no default or willful default at all. While it is an admitted fact that there was arrears of three months' rental, and the tenants have come forward with the explanation to offer that it is true that it was not paid; but, the non-payment was due to the circumstances, a duty is cast upon the tenants to show that they are justified in not making the payment of rental, and hence, it cannot be called as willful default.

23.In the instant case, the circumstances are as follows. Admittedly, there is a water connection for the entire premises. The payment of water tax is one thing, and the payment of water charges is other thing. As far as water tax is concerned, it is understandable that it has got to be paid by the landlady; but, the water charges has got to be paid by the tenants. In the instant case, at one stage, they would plead that it was actually water tax, and at another stage, they would call it as water charges. The earliest notice emanated from the tenants, is Ex.P3, wherein they have specifically stated that termination of the amenity was done by the landlady. It was not their case in the notice that it was made by the department. When the matter came before the Court, their contention in the counter averments and also in evidence was that it was done by the department. The earliest notice was issued on 26.9.2002. Needless to say that water supply is an amenity as understood under the provisions of the Act. If to be so, when there was a termination of amenity, there is a specific provision under Sec.17 of the Act for the restoration of the same. Immediately, they would have approached the Rent Controller for the restoration of the amenity; but, they have not done so. On the contrary, they would say by the said notice that there were compelling circumstances; that the water connection was terminated; that steps must be taken by the landlady immediately, and if not done, they have to get it restored. This Court is at a loss to understand, while there is a specific provision available there, why they could not approach the Rent Controller immediately, and that too, had there been urgency or compelling circumstance as pleaded by the tenants

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all along, why they did not take steps for a period of two months. They have paid only after a period of two months for getting restoration, and in these two months, why they could not approach the Rent Controller and get immediate orders; but, they have not done so.

24.In the instant case, there was not even a notice served by the department for payment of water tax or water charges. In the absence of the same, it would be quite clear that it was a voluntary act done by the tenants for making payment of water tax and in order to adjust the same. All these rulings relied on by the revision petitioners' side and stated supra, are perused. All these would clearly go to show that whenever compelling circumstances are available, they could make the payment. In all those cases, there was a notice issued by the department for payment of tax or there was a distraint notice. In the instant case, it was not so. Apart from that, once they proceeded with the only safeguard that there was termination of amenity by the landlady, they should have approached the Rent Controller under Sec.17 of the Act, but not done so. When it came before the authority below, they came with the different case stating that it was done by the department. Since they have not followed the provisions of Sec.17 of the Act, now they wanted to have a new plea that it was made by the department. Now, at this juncture, the contention put forth by the learned Senior Counsel that it was only an enabling provision in order to get the restoration of amenity under Sec.17 of the Act, and even without going with that provision, they could adopt this method would be against the legislation. Even if it has got to be accepted, there should have been a termination of the amenity by the landlady.

25.Now, the decision relied on by the learned Senior Counsel for the petitioners and reported in 2000 MLJ (SUPP.) 270 (KASTURI V. PADMA) is applicable to a case where termination of the amenity was made by the landlord. It was a case where even the justification was available for the tenant to withhold the rent. In the instant case, even the landlady was also enjoying the same amenity. When the termination was made by the department, the landlady was also suffering during the relevant period. Thus, it would be indicative of the fact that the termination was made by the department. When the provision of law was available for them to approach the Rent Controller and get remedy, they have not done so. On the contrary, they have made the payment voluntarily and adjusted the same; but, they have sent only the electricity charges. That would be indicative of the fact that even after knowing the consequence of the same, they have not done so. Even after that, they filed the applications for deposit of rental from the month of December 2002. It remains to be stated that the petitions for eviction on the ground of willful default have already been filed, and they were also pending. Pending the same, the applications filed by the tenants, have also been numbered, and they have also been pending in the same Court. Needless to say, pendency of an application for eviction under Sec.10(2) of the Act cannot be an impediment for making payment of rental in the very same proceedings, Thus, it can be well stated that the applications under Sec.8(5) of the Act were nothing but superfluous.

26.In the case on hand, even in that applications under Sec.8(5) of the Act, the rents were not actually deposited; but, for the first time, the rent was paid to the Counsel for the landlady in the Court only in October 2003, that too after a period of nearly 10 months. This would be

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indicative of the fact that neither the rent was deposited in the applications under Sec.8(5) of the Act nor it was paid in the pending proceedings under Sec.10(2) of the Act for willful default, but paid after a period of 10 months. This Court is unable to agree with the explanation tendered that they could not make the deposit before the Rent Controller in the applications under Sec.8(5) of the Act, and the Counsel appearing for the landlady in the proceedings under Sec.10(2) of the Act did not receive, and thus, the rental arrears have accumulated. In a given case like this, where a landlord comes forward with an application under Sec.10 (2) of the Act on the ground of willful default, the Court would expect that there should not be any arrears of rental falling even during the pendency of the proceedings. In this case, it has accumulated for a period of 10 months.

27.Adding circumstance is the tenor of the notice issued under Ex.P3 through a Counsel. Once there was a termination of amenity as put forth therein, the regular course open to the tenants is to file an application under Sec.17 of the Act for restoration of the amenity. But, the lawyer's notice would indicate that steps must be taken by the landlady, and if not, they would take necessary steps for restoration, and the cost must be borne by the landlady thereafter. This would go to show that even at the earliest, they wanted to make up the non-payment of rental in such a way and to complicate the situation. That apart, they are not certain as to whether they paid water tax or water charges. However, both these have been clubbed together. According to them, they have paid both. Under the above stated circumstances, this Court is of the considered opinion that not following the recourse of law, and withholding the rental, and making voluntary payment to the department, that too without notice, and having been conscious of these facts, they cannot plead ignorance of law or the provisions of the Act. The same, in the opinion of this Court, would be indifferent and recalcitrant attitude on the part of the tenants, which has got to be termed only as willful default. This Court is of the view that it is a fit case where eviction should be ordered, and it was accordingly done by the authorities below. This Court is unable to notice anything to interfere in the orders of the authorities below in respect of eviction on the ground of willful default. The authorities below were perfectly correct in dismissing the petitions filed by the tenants under Sec.8(5) of the Act. Accordingly, the orders of the authorities below are sustained.

28.As far as the other grounds of personal use and occupation and additional accommodation are concerned, admittedly, the landlady is aged 70. According to her, she is suffering from hypertension and diabetics, and she wants to come down to the ground floor and occupy the premises. Needless to say when a landlady who is suffering from ailment, wants to live in the ground floor in her seventies, nothing would impede her from occupying the premises. The other contentions that both these grounds did not co-exist; that two portions were available already in the first floor; and that she can chose any one of them, do not merit acceptance. In such circumstances, that ground is actually available for her. In view of her age and ailment, no impediment could be felt in allowing her to occupy her property in the ground floor, and hence, the orders of the authorities below on that grounds have also got to be sustained. Accordingly, the orders of the authorities below are sustained.

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29.Now, at this juncture, the learned Counsel for the petitioners would submit that all of them are occupying the premises for residential purposes for a longtime; that they have to find out suitable accommodation, and for vacating and handing over possession, sufficient time has got to be granted. The Court heard the learned Counsel for the respondent also. This Court feels that reasonable time has got to be granted. Accordingly, six months' time is granted to them for vacating and handing over possession. An undertaking affidavit should be filed within a period of two weeks herefrom.

30.In the result, all these civil revision petitions require an order of dismissal, and accordingly, they are dismissed. No costs. Consequently, connected CMPs are also dismissed.

nsv/

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1.The Rent Control Appellate Authority
The VIII Judge
Court of Small Causes
Chennai

2.The Rent Controller
The XIV Judge
Court of Small Causes
Chennai

3. The Section Officer,
V.R.Section, High Court, Madras.

+4 ccs to M/s.P.B.Ramanujam, Advocate Sr.No.42960 to 42963.

+1 cc to Mr P.Rajagopal, Advocate Sr.No.43387.

AKR(CO)
dcp/12.10

CRP NPD Nos.36 to 42
of 2006

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